IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1918 OF 2006

Shamrao Sahebrao Kakade & Ors. ..Petitioners.
Vs.
State of Maharashtra & Ors. ..Respondents.

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Mr. V.D. Patil for the Petitioners.
Mr. P.M. Mokashi, AGP for Respondent Nos.1 and 4.
Mr. M.D. Naik for Respondent Nos.2 and 3.
Mr. S.C. Naidu with Mr. M.M. Gujar i/b C.R. Naidu & Co. for Respondent Nos.5 and 6.

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CORAM: DR. D.Y. CHANDRACHUD, J.

9th August, 2006.

P.C. :

1. Elections were held to the Maharashtra State Co-operative Marketing Federation on 14th August, 1998 and the elected members of the Committee took charge on 9th September, 1998. The term of the Managing committee was due to expire on 9th September, 2003. Successive extensions were granted by the State Government as a result of which the election process came to be postponed. On 18th April, 2003 the State Government granted an extension to the term of the Managing committee for a period of six months under Section 73-G(2) of the Maharashtra Co-

operative Societies Act, 1960 which was to expire on 9th March, 2004. On 31st December, 2003 the term was extended by a further period of six months till 9th September, 2004 once again under Section 73-G(2). Thereafter, exercising the power under Section 157 of the Act, the State Government exempted the Federation from the applicable provisions of the Act so as to grant further extensions. On 24th August, 2004, the power under Section 157 was exercised and the period was extended upto 14th April, 2005. On 3rd April, 2005 there was a further extension till 14th October, 2005 and on 11th October, 2005 there was a final extension until 14th April, 2006. The net result, therefore, was that the term of office of the managing committee was extended for a period of over two and half years after it had expired in September 2003. The Managing Committee thus remained in office for over seven and a half years.

2. The Nagpur Bench of this Court was moved in a petition under Article 226, being Writ Petition 2283 of 2006. On 4th July, 2006 the learned Single Judge before whom the Petition came up for admission took serious note of the fact that elections which were due to be held in 2003 had been postponed thereafter. The

Court was of the view prima facie that an extension could have been granted only until September, 2004, but as a result of the successive orders of extension, the term came to be extended until 13th April, 2006. However, even the extended term had expired. In that view of the matter, the continuation of the Board of Directors of the Fourth Respondent was held to be unjustified. The hearing of the Petition was adjourned so as to enable the authorities to make a statement before the Court of the cut off date that would be applied to prepare a provisional list of voters and to explain as to why an Administrator has not been appointed. The Petition thereafter came up for hearing on 17th July, 2006 when a statement was made before the Court on behalf of the State Government that the cut off date for the preparation of the provisional list of voters would be 30th June, 2002 and that an Administrator has in the meantime been appointed. By the time the matter came up before the Nagpur Bench, the Administrator had in fact taken charge. The Petition was accordingly disposed of.

3. The position as it now stands is that the Administrator has now taken charge and the election programme has been promulgated. The election programme has commenced with the

publication of the provisional list of voters. The final list of voters is to be published on 10th October, 2006. In the affidavit that has been filed in these proceedings by the Joint Director of Marketing, it has been stated that the elections will be held within the time frame set out in accordance with the order dated 12th July, 2006.

4. On behalf of the Petitioner reliance has been placed on the provisions of Section 73-G(2B) in which it has been provided that where for any reason whatsoever the election of the members of the committee was not held or could not be held before the expiry of the term or the extended term, as the case may be, of the existing committee, the members shall cease to hold office on the expiry of the term or the extended term, as the case may be, and shall be deemed to have vacated their offices. The proviso, however, carves out an exception and stipulates where the Collector fails to hold elections to the committee of any such society, the term of office of the members of the committee of that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee. On behalf of the Petitioner, reliance has been placed on the proviso to submit that as a result of the

deeming fiction contained therein, the term of the existing committee must be regarded as being extended until the first meeting of the newly constituted committee.

5. In the affidavit that has been filed in these proceedings on behalf of the Collector, as well as the Joint Director of Marketing, the statement that there was a failure on the part of the Collector to hold the election has been seriously disputed. The affidavit would show that from time to time the Collector had in fact called upon the society to prepare the provisional list of voters under Rule 4(1) of the Maharashtra Specified Co-operative Societies Election to Committee Rules. The committee, however, failed and neglected to do so. Be that as it may, I am of the view that this is not a fit and proper case for the exercise of the jurisdiction under Article 226 of the Constitution. The Administrator has taken charge and the election process has already begun. At this point of time, nearly a month after the Administrator has taken charge, it would manifestly not be appropriate and proper for the Court to exercise its extra-ordinary jurisdiction. In the judgment of this Court in **Nandkumar Mansing Katkar v. Mumbai District**

Central Co-op. Bank Ltd.[1] reference was made to an order of the Supreme Court dated 30th September, 1994 in **Nagshtiya Suresh Babulal v. Bhaskar Krushna Kothawade** which arose out of a case in which this Court had by an interim order dated 22nd September, 1994 stayed an order appointing an Administrator despite the fact that the Administrator had assumed charged on 19th August, 1994. In these facts, the Supreme Court while setting aside the order of this Court held that the Administrator had assumed charge and was also in the office on the date when the interim order was passed by this Court. **Katkar**'s case stood on a different footing because as the reasons in paragraph 21 of the judgment would indicate, the Petition before this Court was lodged on the very next day after the order appointing an administrator was passed. That order was stayed by a Learned Single Judge of this Court. Therefore, the facts of that case are clearly distinguishable. The jurisdiction under Article 226 is in aid of justice. The term of the Committee which was originally five years has expired and a further period of nearly three years has since expired. The Administrator has taken charge. No case has been made out for interference of the Court at this stage. In these

1 2005(4) Bom. C.R. 794.

circumstances, it is only appropriate and proper that the election process which has already been initiated should be completed at the earliest without any delay of any nature whatsoever. Counsel appearing for the First, Second, Third and Fourth Respondents states that the election process shall now be completed by the end of December 2006. The statement as aforesaid is accepted. In view thereof, the interference in the exercise of the extra-ordinary jurisdiction is not warranted. The Petition is dismissed.